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PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

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| Applicant's or agent's file reference ... | FOR FURTHER ACTION | | See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/409) |
| International application No. PCT/IN 02/00210 | International filing date (day/month/year) 16.10.2002 | Priority date (day/month/year) 16.10.2002 | |
| International Patent Classification (IPC) or both national classification and IPC A01N63/04 | | | |
| Applicant NATIONAL RESEARCH DEVELOPMENT CORPORATION | | | |
| <p>1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 4 sheets, including this cover sheet.</p> <p><input type="checkbox"/> This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).</p> <p>These annexes consist of a total of sheets.</p> | | | |
| <p>3. This report contains indications relating to the following items:</p> <ul style="list-style-type: none"> I <input checked="" type="checkbox"/> Basis of the opinion II <input type="checkbox"/> Priority III <input type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability IV <input type="checkbox"/> Lack of unity of invention V <input checked="" type="checkbox"/> Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability, citations and explanations supporting such statement VI <input type="checkbox"/> Certain documents cited VII <input type="checkbox"/> Certain defects in the international application VIII <input type="checkbox"/> Certain observations on the international application | | | |
| Date of submission of the demand 11.05.2004 | | Date of completion of this report 27.01.2005 | |
| Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465 | | Authorized Officer Faizi, R Telephone No. +49 89 2399-6603 | |

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No. **PCT/IN 02/00210**

I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17).*)

Description, Pages

1-8 as published

Claims, Numbers

1-13 as published

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
- ☐ the claims, Nos.:
- ☐ the drawings, sheets:

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

International application No.

PCT/IN 02/0021**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability, citations and explanations supporting such statement****1. Statement**

| | | |
|-------------------------------|-------------|------|
| Novelty (N) | Yes: Claims | 1-13 |
| | No: Claims | |
| Inventive step (IS) | Yes: Claims | |
| | No: Claims | 1-13 |
| Industrial applicability (IA) | Yes: Claims | 1-13 |
| | No: Claims | |

2. Citations and explanations**see separate sheet****BEST AVAILABLE COPY**

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT - SEPARATE SHEET**

International application No: PCT/IN 02/000

V: Reasoned Statements:

Claims 1 to 13 define a process for producing a phytotoxin from a culture of *Alternaria alternata* f. sp. *lantanae* (ITCC-4896) for herbicidal use.

Although the strain as described in the Demand would appear to be novel, the features on which the claims are based are trivial. Such procedural steps are employed in the art to obtain fungal cultures of all fungi and are not specific for the present Demand. Hence, culturing a fungus in a liquid broth and separating phytotoxins therefrom as defined by claim 1 is not found to be based on an inventive step. Similarly the embodiments of claims 2 to 6 are also trivial features.

The procedural steps as described by claims 7 to 13 could, however, be found to be based on an inventive step as they define the specific embodiments of the present Demand. They should be grouped together to define the claimed product which are the phytotoxins found in the oily and solvent layers of the cell free filtrate. The phytotoxins should either be named according to the designation in the Table at page 7, lines 20 onwards or described by other parameters in order to distinguish them from phytotoxins from *A. alternata* already known from the prior-art.

The requirements of Article 33 (3) PCT are thus not satisfied. The applicant is invited to file new claims.

Further, objection arises as to the content of the Demand and the wording of the claims.

Firstly, the claims are vague and worded very broadly so that their scope is obscure. Secondly, the description and claims need revision for clarity reasons as in certain sentences words are missing so that their meaning is not clear, see line 13, page 1 and line 18, page 2.

There are also many typing errors, especially in the claims, see claim 1, lines 2 and 3. The compounds or active components which were extracted and tested should be defined clearly in the claims.